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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 DANA COLLINS,

No. C 04-01677 SI

9 Plaintiff,

ORDER RE: FURTHER BRIEFING

10 v.

11 JOANNE B. BARNHART,

12 Defendant.
13 _____/

14 The Court has reviewed the parties' cross-motions for summary judgment. Plaintiff seeks judicial
15 review of the Administrative Law Judge's September 5, 2003 denial of her request for a hearing on whether
16 to reopen her 1995 application for disability insurance benefits. Plaintiff contends that the failure to consider
17 the 1995 application violated her due process rights because she was entitled to additional benefits under the
18 1995 application that were not recoverable under the 1998 application. Defendant argues, *inter alia*, that
19 plaintiff has failed to state a claim because the Commissioner has been paying plaintiff benefits under the 1998
20 application retroactive to December 1992, and that according to plaintiff's own testimony, the 1995 application
21 alleged the same disability onset date as the 1998 application.

22 In her reply, plaintiff cites 42 C.F.R. § 402(j)(1)(A), as support for her argument that the Social
23 Security regulations only allow up to 12 months of retroactive benefits. Although the citation provided by
24 plaintiff is incorrect, the Court has identified a regulation which appears to support plaintiff's position. *See* 20
25 C.F.R. § 404.621(a) ("If you file an application for disability benefits . . . you may receive benefits for up to
26 12 months immediately before the month in which your application is filed.").

27 Accordingly, the Court directs the parties to file supplemental briefs regarding (1) the benefit onset date
28 under the 1998 application, and (2) whether 20 C.F.R. § 404.621(a), or any other statute or regulation, applies

1 to determine and/or limit the retroactivity of disability insurance benefits. In addition, if defendant concludes
2 that plaintiff would be eligible for additional benefits under the 1995 application that were not recoverable under
3 the 1998 application, defendant shall also address how, if at all, that fact affects defendant's cross-motion for
4 summary judgment. Defendant's supplemental brief shall be filed and served no later than **October 5, 2005**;
5 plaintiff's response supplemental brief shall be filed and served no later than **October 12, 2005**.

6 **IT IS SO ORDERED.**

7 Dated: September 19, 2005

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SUSAN ILLSTON
11 United States District Judge
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